

Patent Docket: 1800/1
Serial No. 09/671,571

REMARKS

This is responsive to the Office Action mailed January 21, 2005. Claims 1-107 were originally in this application, but claims 1-34 and 97-107 have been withdrawn in response to a prior restriction requirement. Claims 35-96 remain pending herein.

CLAIMS 35, 47, 85, 88 AND 97 SATISFY 35 U.S.C. § 112, ¶ 1

The Examiner rejected claims 35, 47, 85, 88 and 97 under 35 U.S.C. § 112, ¶ 1 as based on a disclosure that is not enabling. The Examiner contends that details critical or essential to the practice of the invention, but not included in the claims(s) is not enabled by the disclosure. More specifically, the Examiner contends that details pertaining to the steps involved with the captured music sample comparison against a music database are absent from the claims, which details are critical to the practice of the invention. The Applicant respectfully disagrees with the Examiner's contention vis-à-vis the claims at issue.

The details to perform comparing the captured music sample against a database of music are included in the application in the portion labeled Appendix 1. This provides a complete description of how to compare the captured music sample against a database of music. As such, claims 35, 47, 85, 88 and 97 are thereby enabled by the disclosure. Reconsideration and withdrawal of the rejection of claims 35, 47, 85, 88 and 97 is therefore respectfully requested.

CLAIMS 35-44 ARE PATENTABLE OVER GOKCEN

The Examiner rejected claims 35-44 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,125,024A to Gokcen [hereinafter "Gokcen"]. Essentially, the Examiner contends that Gokcen discloses all of the elements of the claims at issue. The Applicant respectfully disagrees with the Examiner's characterization of this reference vis-à-vis the claims at issue.

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Claim 35 includes the recitation: "receiving a signal including a *captured sample of media stream* from the user" [emphasis supplied]. Gokcen fails to disclose a system in which a captured sample of a media stream is received. Rather, Gokcen discloses a voice recognition system. Simply put, a voice sample is not a media stream. As such Gokcen fails to disclose all of the elements of the claims at issue, and therefore fails to anticipate these claims. Reconsideration and withdrawal of the rejection of claims 35-44 is therefore respectfully requested.

CLAIMS 45-99 ARE PATENTABLE OVER GOKCEN AND POCOCK

The Examiner rejected claims 45-99 under 35 U.S.C. § 103(a) as being unpatentable over Gokcen in view of U.S. Patent No. 5,661,787A to Pocock [hereinafter "Pocock"]. Essentially, the Examiner contends that the combination of Gokcen and Pocock discloses all of the elements of the claims at issue. The Applicant respectfully disagrees with the Examiner's characterization of these references vis-à-vis the claims at issue.

As discussed above, Gokcen fails to disclose "receiving a signal including a captured sample of media stream from the user." Moreover, Pocock also fails to disclose this teaching. As a result, any combination of Gokcen and Pocock also fails to disclose this teaching.

In short, the Applicant respectfully submits that the Examiner has failed to make a *prima facie* case for obviousness because the combination of these references (*i.e.*, Gokcen and Pocock), even assuming *arguendo* they can be combined, does not disclose or suggest all elements of Applicant's rejected claims. As such, the claims at issue are neither anticipated by nor made obvious by these references (*i.e.*, Gokcen and Pocock), either taken alone or in any combination.

CONCLUSION

The Applicants respectfully submit this application is in condition for allowance and request issuance of a Notice of Allowance.

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In the event the prosecution of this application can be efficiently advanced by a phone discussion, it is requested that the undersigned attorney be called at (703) 435-9390.

FEEs

If additional amounts are due following the Remarks above, or for any other reason, it is respectfully requested that the PTO charge any deficiency or credit any overpayment to the deposit account of Mayer Fortkort & Williams PC, Deposit Account, #50-1047.

Respectfully submitted,

By 
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Date: April 21, 2005

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